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ABSTRACT

Designed as a general introduction to some areas of the law which directly affect teachers and students in California schools, the purpose of this handbook is to enable teachers to protect themselves in the performance of their duty and to protect their students by conveying needed information about student rights and responsibilities. Part I, "Fundamental Rights of Students," discusses the right to an education, compulsory education, searches and seizures, due process, freedom of speech and expression, and religion in the school. Part II, "Student Behavior," describes the regulations governing suspension and expulsion, corporal pubishment, dress codes, grooming and appearance, smoking, and truancy. Part III discusses the teacher's duty to protect students. Part IV, "Crimes, Law Enforcement, and the Schools," summarizes criminal violations concerning alcohol, drugs and narcotics, weapons, fighting, theft, miscellaneous "youth crimes," crimes against school personnel and property, and loitering. Part V, "Privacy and Disclosure of Student Records," discusses annual notification of parents or guardians, access to records, pupil record categories, and correction or removal of information. Part VI, "Special Programs," discusses special education, compensatory education, Indian education, and the rights of gay students. Although coverage of the subject matter is general, citation of legal authority provides a starting point for further investigation. (CM)

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LEGAL RIGHTS AND RESPONSIBILITIES IN THE PUBLIC SCHOOL

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LEGAL RIGHTS AND RESPONSIBILITIES

IN THE PUBLIC SCHOOLS

A Handbook for Teachers in California Schools

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Introduction and Overview

This handbook is designed as a general introduction to some of the major areas of the law which most directly impact individuals in their capacities as teachers and students in California schools.

It's primary purpose is to better enable teachers to understand the rights and responsibilities of students and of themselves in an educational context, so they can better perform and protect themselves in the performance of their duties. This in turn will enable them to knowingly and confidently convey the information to the students in their charge.

The coverage is general in nature, in many cases providing a mere introduction to a subject. Legal authority is cited to provide a starting point should further investigation of a particular area be desired.

The handbook is broken into six parts beginning with a section on Fundamental Rights of Students. This is followed by sections on Student Behavior, Teacher's Duty to Protect, Crimes, Law Enforcement and The Schools, Privacy and Disclosure of Student Records, and finally, Special Programs.

While virtually every facet of the law may at some point have relevance to any given individual, the areas covered in this handbook are believed to include those of most current and particular relevance to individuals in their capacities as teachers and students in California schools.

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FUNDAMENTAL RIGHTS OF STUDENTS

FUNDAMENTAL RIGHTS OF STUDENTS

Students possess certain fundamental constitutional rights as citizens of California and of the United States. In the case of Tinker vs. Des Moines Community School District (393 U.S. 503 [1969]), the decision of the U.S. Supreme Court included the following:

> In our system, state operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our consitiution. They are possessed of fundamental rights which the State must respect, just as they themselves (students) must respect their obligations to the state.

Students do not leave their rights outside the school. On the contrary, students have certain rights under the constitution that must be protected.

The Right to an Education

The California Supreme Court has held that education is a fundamental right of all students in California since education is essential to future economic, social, and personal growth (Serrano vs. Priest, 18 Cal. 3d 728 [1976]).

Neither the Education Code nor the California Administration Code, Title 5, Education, contains any provisions with respect to the action a student and/or his or her parent or guardian may take when one or both believe the student is not receiving the education to which he or she is entitled. However, the rulings in the case of Doe vs. San Francisco Unified School District, (60 Cal. App. 3d 814) has made clear that the student and/or his or her parent or guardian may not sue for money damages in such instances.

Recourse lies in consultation with teachers, administrators and governing officials and boards.

The courts have ruled that "attendance at a public school is a legal right protected and entitled to the guarantees by which other legal rights are protected and secured," (Ward vs. Flood, 48 Cal. 36; Wysinger vs. Crookshanic, 82 Cal. 588; Miller vs. Dailey, 136 Cal 212).

It is a "fundamental interest"; that is, the right to receive an education is protected by the California Constitution (Serrano vs. Priest, 18 Cal. 3d 328 [1975].

Compulsory Education

A state has the power to make and enforce provisions for the compulsory education of children within the state (Ex-parte Liddel, 93 Cal. 633). More specifically the state of California may require that (1) parents place their children in a public or a private school that meets certain prescribed conditions; or (2) children receive from a private tutor or other person who possesses the required qualifications instruction in the subject matter precribed by the Education Code (People vs. Turner, 121 Cal. App. 2d Supp. 861).

Although the legislature has the right to prescribe compulsory education for specified categories of minors, it does not have the power to compel such minors to receive instruction from public school teachers only. Such authority would take away the right of parents to direct the upbringing and education of children under their control. (Roman Catholic etc. Corporation vs. City of Piedmont, 45 Cal. 2d 325), which would be unconstitutional (People vs. Turner). However, the right of parents to send their children to private rather than public schools is subject to a reasonable exercise of the state's police power (Roman Catholic etc. Corporation vs. City of Piedmont).

Compulsory Education for Minors
Ages Six to Sixteen

As provided by Education Code Section 48200, each parent, guardian, or other person having control or charge of a minor who is between the ages of six and sixteen years and who is not exempted by statute must send the child to a public full-time day school for the entire time during which the public schools of the city, city and county, or school district in which the minor lives are in session.

Any exemption of a minor from attendance at a public full-time school must be obtained from the proper school authorities (Education Code Section 48220). School authorities must grant exemptions to children who can be classified as follows:

1. Children whose physical or mental condition is such that it prevents or renders inadvisable attendance at a school or application to study (Education Code Section 48221).

2. Children who are being instructed in a private full-time day school that meets certain requirements (Education Code Section 48222).

3. Children who are mentally gifted and who are being taught in a private full-time day school (Education Code Section 48223).

4. Children who, for at least three hours a day and 175 days of each calendar year, are being instructed in English and the other branches of study required to be taught in the public schools by a private tutor or other person holding a valid credential for the grade taught (Education Code Section 48225).

5. Children who are in entertainment or allied industries and who are taught by qualified persons or organizations (Education Code Section 48225).

6. Children who are blind or deaf to an extent that renders them incapable of receiving instruction in the regular elementary or secondary schools (Education Code Section 48226).

7. Children who, on the recommendation of the principal, the supervisor of attendance, or the superintendent of schools and upon the approval of the Superintendent of Public Instruction, have been assigned to a vocational course in a place of employment (Education Code sections 48227-48228). (Such children must be over the age of fourteen and must have a valid work permit.)

8. Children who hold permits to work (Education Code Section 48230) (Such children are subject to compulsory attendance upon part-time classes, however.)

Any person who has control of a minor and who fails to comply with any of the provisions of the compulsory education law related to minors ages six to sixteen, unless excused or exempted therefrom, is guilty of a misdemeanor and is subject to a fine or imprisonment (Education Code Section 48293).

Compulsory Education for Minors Ages Sixteen to Eighteen

As provided by Education Code Section 48400, all persons who are at least sixteen but under eighteen years of age and who are not exempted by statute shall attend special continuation

education classes maintained by the governing board of the high school district or unified district in which they reside or by the governing board of a neighboring high school district or unified district for not less than four 60-minute hours per week for the regularly established annual school term. In addition Education Code 48450 stipulates that each parent, guardian, or other person having control of a minor required to attend such classes must compel such attendance.

Education Code Section 48410 provides for exemption from compulsory continuation education of persons who:

1. Have been graduated from a high school maintaining a four-year course above grade eight or who have had an equal amount of education in a private school or by private tuition.

2. Are in attendance upon a public or private full-time day school or satisfactory part-time classes maintained by other agencies.

3. Are disqualified for attendance upon these classes because of their physical or mental condition or because of personal services that they must render to their dependents.

4. Are satisfactorily attending a regional occupational center (ROC) or regional occupational program (ROP) as provided in Education Code Section 48432.

5. Have demonstrated proficency equal to or greater than the standards established by the Department of Education pursuant to Education Code Section 48412 and who have verified approval of their parent or guardian to withdraw from school (Education Code Section 48410).

6. Are between the ages of sixteen and eighteen, are regularly employed, and are attending classes for adults not less than four hours per week.

Any parent, guardian, or other person who has control of a minor required to attend special continuation education classes and who fails to compel such attendance or who fails to retain a copy of the minor's work permit or to present it on request is guilty of a misdemeanor and is liable to a fine or imprisonment (Education Code Section 48450 and 48454).

Searches and Seizures

The courts have demonstrated quite clearly that students are not entitled to the same degree of Fourth Amendment rights as adults are entitled to. It is clear, however, that the Constitution is not entirely inapplicable to students and that it does place some limits on the conduct of school officials who have been given the authority, within the scope of their duties, to detain and search a student while the student is under the control of the school (In re Thomas G., 11 Cal. App. 3d 1193). When the purpose of a search is within the scope of the school officials' duties, the justification thereof is not measured by the rules authorizing the search of an adult by the police (In re Fred C., 26 Cal. App. 3d 320).

Although proper school authorities may conduct searches whenever such searches reasonably fall within the scope of their duties and responsibilities, the Constitution prohibits searches at the whim of the school officials. A search by a school official must generally meet two conditions. First, the search must be within the scope of the school officials' duties. Second, the search must be reasonable in terms of the facts and circumstances of the case. As the court stated in People vs. Ingle (53 Cal. 2d 407), "there is no exact formula for determination of reasonable cause for an arrest; each case must be decided on its own facts and circumstances, and on the total atmosphere of the case."

Due Process

Due Process involves, among other considerations, the procedural rights when a student is charged with an offense. It is a complicated process involving the actions taken and their timing and at a minimum, requires notice and an opportunity to be heard.
(For specifics on procedural rights afforded students, see sections on Student Behavior and Privacy and Disclosure of Student Records).

Free Speech and Expression

In California, the right of students to free speech is statutory as well as constitutional. Education Code Section 10611 provides that "students of the public schools have the right to exercise free expression..."

The question then is not whether the right exists but rather what activity it encompasses, that is, the extent to which common forms of activity qualify as "speech" or "expression," and the extent to which such activity may nevertheless be regulated.

Protected Activities

Wearing Buttons, Badges, and other Insignia:

Education Code Section 10611 grants students the right to wear "buttons, badges and other insignia." This statute codifies the ruling of the U.S. Supreme Court in Tinker v. Des Moines Community School District, 393 U.S. 503, which upheld the right of students to wear black armbands to class in protest against American foreign policy despite school rules forbidding such activity.

This right as well as others discussed below is not absolute and may be limited in situations where there is a "clear and present danger" that the activity will "materially and substantially interfer with the requirements of appropriate discipline in the operation of the school." (Tinker v. Des Moines, et al.)

Refusing to Salute The Flag:

In West Virginia State Board of Education v. Barnette, 319 U.S. 624, the U.S. Supreme Court held that students may not be compelled to salute the American flag.

Distributing Literature:

The Education Code grants students the right to distribute printed materials or petitions and to make use of bulletin boards (Education Code § 10611). California Courts have recognized this as a fundamental right:

> The protection of the First and Fourteenth Amendments extends to the distribution of information and opinion concerning religious, political and economic matters, and other subjects of public concern through handbills, leaflets, and pamphlets. (Mandel v. Muncipal Court, 276 Cal. App. 2d 649, 665.)

Demonstrating:

The U.S. Supreme Court has recognized both the right of students to peacefully publicize their grievances on school grounds, and of non-students to picket on public sidewalks adjacent to school grounds (Grayned v. City of Rockford, 408 U.S. 104).

Note: This right does not extend to interferring with pedestrian traffic or right of way of motorists. (PC § 647c, 370; VC § 21954.)

The Limits of Free Speech

Actitivty Creating Clear and Present Danger of Substantial Disruption:

Even if an activity may properly be classified as "speech" or "expression," it may be prohibited if it "so incites students as to create a clear and present danger of the commission of unlawful acts on school premises, or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school." (Education Code § 10611.) The danger, however, must rise "far above public inconvenience, annoyance or unrest." (Mandel v. Municipal Court, 276 Cal. App. 2d 649, 669.)

This standard requires administration to possess specific facts, rather than speculations or opinions, to establish that substantial danger is "clear and present."

For example, while students are ordinarily entitled to wear symbols of dissent, those symbols may be banned if they are causing "material and substantial interference with the requirements of appropriate discipline in the operation of the school." (Tinker v. Des Moines Community School District, 393 U.S. 503, 506.)

Likewise, while peaceful demonstrations are lawful, "...schools could hardly tolerate boisterous demonstrators who drown out classroom conversation, make studying impossible, block entrances, or incite children to leave the schoolhouse." (Grayned v. City of Rockford, 408 U.S. 104.)

While literature which can be shown to have substantially disrupted or materially interferred with school procedures may be banned and its disseminators punished, no disciplinary action may be taken in the absence of such a showing. (Scoville v. Board of Education, 425 F2d 10.)

Furthermore, one student's right to free expression may not be limited merely because it may lead other students to exercise their rights. "The First Amendment protects successful dissent as well as ineffective protests." (Hanover v. Northrup, 325 F.Supp. 170, 173.)

Prohibited Content:

Education Code Section 10611 prohibits expression which is "obscene, libelous, or slanderous according to current legal standards." The expression of views which does not fall in the above categories is protected. As a California court recently said:

> If First Amendment rights were limited to speech that pleases and tranquilizes the listener, the constitutional immunity would be unnecessary. No one objects to what he likes to hear...'Phlegmatic, indeed, is the individual who at some time has not recoiled at the exercise of free speech by others. Annoyance and inconvenience, however, are a small price to pay for preservation of our most cherished right..." (Castro v. Superior Court, 9 Cal. App. 3d 675, 699-700.)

Regulation of Time, Place and Manner

Education Code Section 10611 requires each governing board and each county superintendent to adopt rules and regulations concerning the exercise of free expression "which shall include reasonable provisions for the time, place, and manner of conducting such activities."

The rationale behind this statute has long been recognized by the courts. As the United States Supreme Court states in Grayned v. City of Rockford, 408 U.S. 104:

> For example, two parades cannot march on the same street simultaneously, and government may turn them down. Subject to such reasonable regulation, however, peaceful demonstrations in public places are protected by the First Amendment. Of course, where demonstrations turn violent, they lose their protected quality as expression under the First Amendment.

> The nature of a place, the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable. Although a silent vigil may not unduly interfere with a public library, making a speech in the reading room almost certainly would. That same speech should be prefectly appropriate in a park. The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular time.

Regulations of time, place or manner must meet three tests:

First, the regulation must be narrowly drawn to channel speech in such a manner that it does not interfere with other important interests, rather than to eliminate it. This is what the California Legislature meant when it specified that the provisons must be "reasonable."

Second, the regulations must clearly define with objective standards the areas of prohibition. "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them....Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to 'steer far wide of the unlawful zone...than if the boundaries of the forbidden areas were clearly marked.'" Grayned v. City of Rockford supa, at 108-109.

Finally, the regulations may not be discriminatory. (Sullivan v. Houston 2nd School District, 307 F. Supp. 1328, 1340).

Religion In The School

Two fundamental First Amendment principles dictate the relationship of the public schools towards religion. The first of these is the separation of church and state: the prohibition against public agencies aiding or opposing religion

in general or one religion over another. The second of these is the right of each person to the free exercise of his religious beliefs.

As the United States Supreme Court has addressed itself to these principles as they apply to public-school activities, three rules have crystalized:

1) Bible reading is prohibited in public schools even if it is done without comment and even if students have the option of being excused from the exercise.

2) Prayers may not be recited in schools even if students have the option of being excused from them.

3) Sectarian or denominational doctrines may not be taught, directly or indirectly, in the public schools.

All this hardly means that the Bible or other religious works are banned from the public schools. They may be used as instructional material for reference, historical, poetic, or any other non-religious purpose. While Bibles and similar library works may not be distributed through the public schools, they may be placed in school libraries.

Learning about religious traditions and history is by no means forbidden so long as the instruction is not intended to engender religious beliefs. (Education Code §351511.)

Under California law, it is illegal to administer any test, questionnaire, survey or examination containing any questions concerning a pupil's (or his parents' or guardian's) beliefs or practices in religion or morality (as well as in sex or family life) unless the parent or guardian is notified in writing that such questions will be asked and consent is received in writing from the parents or guardian. (Education Code Section 10901.)

To the extent that any part of the instruction in "health," family-life education or sex education, conflicts with the religious training or belief of a parent or guardian (and this includes the personal moral convictions of the parent or guardian), the child must be excused from such portions of the class on the written request of the parent or guardian. (Education Code §51240.)

Absence for Religious Purposes

Pupils, with the written consent of their parents or guardians, may be excused from school in order to participate in religious exercises or to receive moral and religious instruction at their respective places of worship or at other suitable place or places away from school property designated by the religious group, church, or denomination. Such absence shall not be deemed absence in computing average daily attendance if the following conditions are complied with:

(a) The governing board of the district, in its discretion, adopts a permissive resolution.

(b) The governing board adopts applicable regulations.

(c) Each pupil so excused attends at least the minimum school day for his grade for elementary schools, and as provided by the relevant provisions of the rules and regulations of the State Board of Education for secondary schools.

(d) No pupil is excused from school for such purpose on more than four days per month.

Education Code §46014

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STUDENT BEHAVIOR

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As a result of recent court decisions and legislation, public school students now enjoy more rights and privileges than ever before. Along with these new rights and privileges, however, they also have increasing responsibilities. Students must realize that they will be held accountable for certain acts that involve or affect both school personnel and their fellow students.

In California all students have the responsibility to "comply with the regulations, pursue the required course of study, and submit to the authority of the teacher of the schools" (Educ C. § 48921). In addition, students, like all persons, have the responsibility to respect the rights of all other individuals.

In California the legislature has given to school authorities the power to maintain discipline in order that the public school system may function in accordance with its intended purpose.

Suspension

As stated in Education Code Section 48901, a teacher may, for a specified cause, suspend a student from his or her class for the day of the suspension and the day following. Immediately after taking such action, the teacher must report the suspension to the school principal and must send the student to the principal for appropriate action. As soon as possible after suspending the student, the teacher must ask the student's parent or guardian to attend a parent-teacher conference regarding suspension. Education Code Section 48903 gives the principal of the school the authority to suspend a student for specified cause for not more than five consecutive school days.

Except in an emergency situation, a suspension by the principal must be preceded by an informal conference between the student and the principal or his or her designee. As used in the Education Code, the term emergency situation means "a situation determined by the principal to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel." If practicable, the teacher or supervisor who referred the student to the principal shall also attend the conference. At the conference the student must be told of the charges and evidence against him or her and must be given an opportunity to present his or her version of the situation and evidence in his or her defense (Education Code Section 48903).

If the principal determines that an emergency situation exists and thus suspends a student without a conference, a conference shall be held within 72 hours of the ordering of the suspension (Education Code Section 48903).

Within 24 hours of the beginning of a suspension, the principal must mail a written notice of the suspension to the student's parent or guardian. Also within 24 hours of the beginning of a suspension, the principal or his or her designee must attempt to contact the student's parent or guardian in person or by telephone to communicate the information contained in the written report (Education Code Section 48903).

Whenever a principal suspends a student, the student or the student's parent or guardian may appeal the suspension to the district superintendent or the superintendent's designee. The superintendent or his or her designee must, within three school days after receiving the request for a meeting, grant a hearing (Education Code Section 48904). Within two schooldays after the hearing, the superintendent or his or her designee shall determine whether or not sufficient evidence of the violation existed and whether the penalty imposed was appropriate for the violation (Education Code Section 48904).

No student may be suspended for more than 20 schooldays in one school year. If, for adjustment purposes, a student is transferred to or enrolled in another regular school, an opportunity class in his or her school of residence, an opportunity school or class, or a continuation education school or class, the number of addditional days of suspension following the reassignment of the student is limited to ten (Education Code Section 48903).

To the degree that such opportunities can be reasonably provided, a suspended student shall be allowed to complete all assignments and to take all tests missed during his or her suspension. Upon satisfactory completion of make-up work, the student shall receive full credit for such work (Education Code Section 48903.5).

A student may not be suspended until other forms of correction have failed to bring about proper conduct on his or her part (Education Code Section 48900.2).

Expulsion

The governing board of a school district may expel a student for specified cause. As used in the Education Code, the term expulsion is defined as suspension from regular classroom instruction for more than five schooldays or involuntary

transfer to a continuation school. Before expelling a student, the governing board must determine that (1) other measures of correction have failed to bring about proper conduct; (2) other means of correction are not feasible; or (3) the nature of the student's violation is such that the presence of the student causes a continuing danger to the physical safety of the student or others (Education Code Section 48904.5).

Within 20 calendar days after a recommendation for expulsion, or within 25 calendar days of the date of the suspension is ordered, whichever is sooner, the governing board must grant a hearing to the student and his or her parent or guardian. A written notice of the hearing must be given to the student and the student's parent or guardian at least ten days before the hearing date. The student may be represented by an attorney or other representative, may inspect and obtain a copy of all relevant documents, may question witnesses, and may present evidence in his or her behalf. The hearing shall be closed to the public unless the student or the parent or guardian requests that the hearing be a public hearing. The hearing may be conducted by (1) the governing board itself; (2) a state or county hearing officer; (3) a panel of three certificated employees of the district, none of whom shall be on the staff of the school in which the student is enrolled. In lieu of having the hearing panel consist exclusively of district employees, the governing board may request the services of one or more certificated persons not employed by the district (Education Code Section 48914).

If the governing board, hearing officer, or panel reverses the decision to expel, the student shall be reinstated to school. If a hearing officer or panel recommends expulsion, the governing board must base its decision on the evidence presented at the hearing. Regardless of whether an explusion hearing is conducted in private or in public by the governing board, a hearing officer, or a panel, the governing board must take its final action to expel at a public hearing. If the decision of the governing board is to expel the student, the student or the student's parent or guardian must be notified in writing of (1) the governing board's decision; and (2) the right to appeal the expulsion to the county board of education (Education Code Section 48914). The student or the student's parent or guardian may appeal the expulsion to the county board of education within 30 days following the governing board's decision to expel (Education Code Section 48915).

A student may not be expelled unless other means of correction have repeatedly failed to bring about proper conduct on the part of the student (Education Code Section 48904.5).

Grounds For Suspension and Expulsion

Pursuant to Education Code Section 48900 a student may be suspended and expelled for any of the following actions while he or she is on school grounds or while he or she is off school grounds and involved in an activity related to school attendance:

1. Causing or attempting to cause damage to school property or stealing or attempting to steal school property.

2. Causing or attempting to cause damage to private property or stealing or attempting to steal private property.

3. Causing, attempting to cause, or threatening to cause physical injury to another person except in self-defense.

4. Possessing, selling, or otherwise furnishing any firearm, knife, explosive, or other dangerous object of no reasonable use to the student at school or at a school activity off school grounds.

5. Unlawfully possessing, using, selling, or otherwise furnishing or being under the influence of a restricted drug, alcoholic beverage, or intoxicant.

6. Possessing or using tobacco except in a designated smoking area.

7. Committing an obscene act or engaging in habitual profanity or vulgarity.

8. Disrupting school activities or defying the authority of school supervisors, teachers, or administrators.

Education Code sections 48320-48324 provide for special school attendance review boards in each county in California, and in some school districts, to assist in coordinating resources and promoting programs to meet the special needs of students who have school attendance problems or who are behavior problems in school.

Although the law does not require districts to notify parents of the grounds on which students may be suspended or expelled from school, such an action by districts is recommended.

Corporal Punishment

The governing board of a school district may adopt rules and regulations authorizing teachers, principals, or other certificated personnel to administer reasonable corporal punishment when such punishment is deemed an appropriate corrective measure (Education Code Section 49000). However, even when the governing board has adopted a policy of corporal punishment, such punishment shall not be administered to a student unless the student's parent or guardian has given written approval for such action (Education Code Section 49001).

At the beginning of the first semester or quarter of the regular school term, the governing board of a district that has adopted a policy of corporal punishment shall notify the parent or guardian that corporal punishment shall not be administered to a student without the prior written permission of the student's parent or guardian. The notice shall be a written notice and should be in a language that is understandable by the parent (Education Code Section 49001).

A teacher, vice-principal, principal, or any other certificated employee of a school district shall not be subject to criminal prosecution for the exercise, during the performance of his or her duties, of the same degree of physical control over a student that the student's parent or guardian would be legally privileged to exercise. The degree of physical control that a certificated employee exercises shall not exceed the amount of physical control reasonably necessary to maintain order, protect property, protect the health and safety of students, or maintain proper and appropriate conditions conducive to learning (Education Code Section 44807).

Dress Codes, Grooming, and Appearance

The Legislature has given to school district governing boards the authority to prescribe rules for the operation of the schools under their jurisdiction (Education Code Section 35291). Such rules must be consistent with law and with rules prescribed by the State Board of Education. The authority for a governing board includes adopting rules and regulations relating to the appearance of students, including their dress. A school district may enforce these provisions by suspending or expelling a student who refuses or neglects to obey the rules prescribed by the governing board. Several lawsuits have resulted from regulations on hair length and dress codes. The California courts have held that the power to adopt these rules and regulations remains with the school district governing board; the board's power to do so

has never been held unconstitutional. However, many dress codes have been held constitutionally defective in their content. To pass the test of constitutionality, dress code rules must not be vague and must have a reasonable relation to the educational process.

In California, pursuant to § 302 of the California Administrative Code, Title 5, Education, the following rule has been adopted by the State Board of Education:

> A pupil who goes to school without proper attention having been given to personal cleanliness or neatness of dress may be sent home to be properly prepared for school, or shall be required to prepare himself for the schoolroom before entering.

Two federal court cases, King vs. Saddleback Junior College District (445 F2d 932[1971]) And Olff vs. Eastside Union High School District (U.S. App 305F. Supp 557 [1969]) have upheld the school districts right to establish regulations for the day-to-day operation of its schools, including its right to develope a dress code, to specify acceptable hair length, and to demand conduct that is conducive to the fulfillment of its responsibility to educate.

Smoking Areas

Unless permitted by governing board rules and regulations, smoking or having tobacco while under the authority of school personnel or while on school premises constitutes good cause for suspension or expulsion (Education Code § 48903.5).

Education Code Section 48903.5 does authorize the governing board of any school district maintaining a high school to adopt rules and regulations permitting the students of the high school to smoke and possess tobacco in a defined smoking area or areas on the high school campus or while under the authority of school personnel. This section also provides that the school district shall take all steps it deems practical to discourage high school students from smoking.

Penal Code Section 398 provides that it is unlawful for any person, firm, or corporation to sell, give, or furnish any type of tobacco product to anyone under the age of eighteen.

Truancy

All students are subject to compulsory full-time education unless they are explicitly exempted. If a student is absent from school without valid excuse more than three days in a school year, he is a truant, and this must be reported to the school district. A person reported more than three times during the school year as a truant can then become an "habitual truant," and his case then is sent to the Attendance Review Board, which has the power when community resources are not available or exhausted, to refer his case to the Juvenile Court for review.

Any student required to attend school full-time can be arrested for his absence from school without a valid excuse. If the student has been declared an habitual truant, such an arrest can then lead to his being taken to the Juvenile Hall for processing by the Court. The parents of the student can be subject to arrest or required to post a bond if their children fail to attend regularly. (Education Code 12401-12403, 12405, 12406; Welfare & Institutions Code § 601 & 700.)

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TEACHER'S DUTY

TO PROTECT

TEACHER'S DUTY TO PROTECT

Just as students have certain responsibilities they can be held accountable for, so too do teachers while engaging in their profession.

Duty to Protect

A fundamental tenet of the "Code of Ethics of the Teaching Profession" is that the teacher must "provide the health and safety of students." (California Administration Code, Title 5 § 5481). This is not only a moral duty but a legal one as well. As the California Supreme Court recently stated:

> California law has long imposed on school authorities a duty to supervise at all times the conduct of children on the school grounds and to enforce those rules and regulations necessary to their protection... Such regulation is necessary precisely because of the commonly know tendency of students to engage in aggressive and impulsive behavior which exposes them and their peers to serious physical harm.
> (Dailey vs. Los Angeles United School District., 2 Cal. 3d 741, 747.)

Further, the law provides that the governing board, principal, and teachers "shall not tolerate" any of the following acts of a pupil:

(a) Gambling; immorality; profanity; and the use or possession of tobacco, intoxication liquior, narcotics or other hallucinogenic or dangerous drugs or substances.

(b) Willful or negligent conduct likely to result in injury to other pupils or school employees or in damage to school property.
(California Administration Code, Title 5 § 5530, 301)

In carrying out this duty, statute require teachers to "enforce... the rules and regulations prescribed for schools" (Education Code § 13556) and to "exercise careful supervision over the moral conditions in their respective schools: (California Administration Code, Title §5530).

The duty to supervise extends beyond the classroom. Education Code section 13557 provides that "every teacher in the public schools shall hold pupils to strict account for their conduct on the way to and from school, on the playgrounds, or during recess."

In short, teachers stand "in loco parentis" - in the place of the parents - and are similarly responsible to actively protect the children under their charge. (Stuart vs. Board of Education, 161 Cal. 210, 213.)

This responsibility encompasses the duty to provide sufficient (in terms of numbers) and adequate (in terms of activity) supervision. (Zuglir vs. Santa Cruz City High School District, 169 Cal. App. 277; Charonnat vs. San Francisco United School District, 56 Cal. App. 2d 840; Dailey vs. Los Angeles Unified School District, 56 Cal. App. 2d 840;)

The physical presence of teachers will in itself prevent many dangerous incidents, however should such an incident arise, the teacher or administrator must take effective action of some kind. (Biggers vs. Sacramento City Unified School District, 25 Cal. App. 3rd, 269).

At a minimum, teachers must see to it that disciplinary offenses are met with disciplinary punishments. This is what Education Code Section means by holding students to strict account.

In some cases it is a criminal offense for teachers or administrators to fail to notify the police:

1. Pupil Attacking or Menacing School Employee.

   If a pupil attacks, assaults, or menaces any school employee, including a teacher, it is the duty of the employee's supervisor to report the incident to the appropriate law enforcement authorities. Failure to do so is a misdemeanor and will result in a fine of up to $200. (Education Code § 12916 (a).)

   If anyone on the Board of Education of a school district, a County Superintendent of Schools, or any employee of a school district does or says anything which is designed directly or indirectly, to influence the person not to make the required report, he shall be guilty of a misdemeanor and fined $100 to $200. (Education Code 12912 (b).)

2. Pupil Injured by Nonaccidental Means.

Whenever a teacher, principal, or school nurse (when no doctor is present) observes a minor under 12 years of age that has been sexually molested or with injuries which appear to have been inflicted by other than accidental means, he must within 36 hours report the observation by phone and in writing to (1) the local law enforcement agency and to the juvenile probation department or, (2) as an alternative, either to the County Welfare Department or to the County Health Department. Failure to do so will result in up to six months in jail, up to a $500 fine, or both. No person shall incur any civil or criminal liability as a result of making such a report unless it can be proven that the person knew or should have known the report was false. (Penal Code §11161.5)

Thus, if a pupil is attacked on the playground and sustains any physical injury, any teacher or principal who observes the injury is required to make these reports. Likewise if home abuse is suspected, that fact should be reported.

3. Pupil Commits Assault With A Deadly Weapon.

If a student commits an assault with a deadly weapon, the chief administrative employee at the school must, before suspending or expelling him, notify the police of the crime. Failure to do so is a misdemeanor and will result in a fine of up to $100. (Educational Code § 10605.5.)

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CRIMES, LAW ENFORCEMENT AND THE SCHOOLS

CRIMES, LAW ENFORCEMENT AND THE SCHOOLS

While purely disciplinary offenses must be dealt with administratively, law enforcement is available to aid school officials in dealing with criminal behavior.

A law enforcement officer, in the performance of his or her duty, is endowed with the power to arrest or question a student while the latter is in attendance at school (Penal Code § 830.1, 54 Ops. Cal. Atty. Gen. 96). However, in taking such action, a law enforcement officer must give due consideration and recognition to the rights and responsibilities of all persons involved.Furthermore, whenever possible school officials should be consulted before the law enforcement officers act. While the parent or guardian must be informed immediately of any such action (Education Code § 13013), parental consent is not a prerequisite to arresting or questioning a student or to removing him or her from school to accomplish these ends. (32 Ops. Cal Atty. Gen. 46).

Further there is no liability for a teacher in such situations if the proper standard of care is exercised in releasing a pupil to the police. (54 Ops. Cal. Atty. Gen. 96). Quite the contrary, school officials must not delay, resist or obstruct officers in the discharge of their duties on campus. (Penal Code § 148).

The Criminal Law

Following is a summary of criminal violations which occur most often on campus. These crimes are divided into misdemeanors and felonies. A misdemeanor is a crime that carries a less severe penalty than a felony. Specific penalties set by statute are practically speaking unapplicable to juveniles because of the separate juvenile justice system. However, whether or not a crime is a misdemeanor or a felony is relevant since it indicates the seriousness of the violation in the eyes of the law.

Alcohol

The following actions in connection with alcohol are prohibited: Purchase or sale of alcohol by anyone under the age of 21 (Business & Professions Code 25658(b), 25659); possession or consumption on the street,in a car or in any public place; driving while drinking or while under the influence of alcohol. (Business & Professions Code 25608, 25662; Vehicle Code 23101, 23102, 23121-23123.5.)

Drugs and Narcotics

Serious penalties are attached to the use or sale of over 135 substances.

The following acts as they related to specific drugs are felonies under provisions of the California Health & Safety Code. Heroin, Cocaine, LSD, DMT, STP, Amphetamines.

1) Possession (Section 11350)
2) Possession for sale (Section 11351)
3) Sale, gift, transporting, furnishing, etc. (Section 11352)
4) Involving a minor in the above crimes, or furnishing these drugs to a minor (Sections 11353, 11354)

Barbiturates:

1) Possession (Section 11377)
2) Possession for sale (Section 11378)
3) Sale, gift, transporting, furnishing, etc. (Section 11379)
4) Involving minors in the above crimes, or furnishing barbiturates to a minor (Section 11380)
5) Agreeing or offering to violate these laws (felony or misdemeanor at judges discretion (Section 11382)

Marijuana:

1) Possession (felony or misdemeanor depending on amount and concentration Section 11357)
2) Possession for sale (Section 11359)
3) Planting, cultivating, processing (Section 11358)
4) Use of a minor to sell, or sale to a minor (Section 11361)
5) Sale, offer to sell, transport, import, give, etc. (Section 11360).

Possession of Paraphernalia used for unlawfully taking drugs, a misdemeanor (Section 11364).

Being under the Influence of Drugs, a misdemeanor (Section 11550).

Being in a place where Unlawful Drug Use Is Occuring, a misdemeanor (Section 11365).

Glue Sniffing, a misdemeanor (P.C. § 381).

Faking to get a prescription, or altering or forging a prescription, a felony (H & S § 11368).

Weapons:

Following is a brief summary of gun law violations most likely to occur on school premises:

Guns-Possession on School Grounds an alternative felony misdemeanor (PC § 626.9). (NOTE: knowing exercise of dominion and control over the weapon is sufficient for possession.)

Possession by minors of firearm with a barrel less than 12 inches long (without written permission or presence of parent) a crime. (PC § 12021.5) Also illegal to furnish a minor with such a weapon (PC § 12072).

Illegal to sell or give a minor any firearm without permission of the parent or guardian (PC § 12551, 12552). Illegal for anyone to possess certain types of firearms, such as sawed off shotguns, unmarked pistols or revolvers and firearms, from which the identifying numbers have been removed, etc., (PC 468, 537e, 12001.5, 12094, 12220, 12520.)

Felony for unlicensed person to carry concealed weapon which has a barrel less than 12" long. (PC § 12025)

Exhibiting a firearm in a rude, angry or threatening manner, or using it in a fight, a misdemeanor (PC § 417).

Parent liable for injury inflicted by minor under 15 by means of a firearm if parent permitted child to have the firearm. (CC § 1714.3)

Knives

Misdemeanor to possess, sell, loan, give, etc., switchblade with blade longer than two inches. (PC § 653k)

Felony to carry concealed a dagger, stiletto, dirk or similar knife. Misdemeanor to bring or possess such weapons without authority on school property (PC 12020, 626-10).

Misdemeanor to bring or possess on school property without authority knives having blades over 3 1/2" long, folding knives with blades that lock into place, or razors with unguarded blades. Misdemeanor to draw or exhibit any knife with a blade over 5" long in a rude, angry, or threatening manner or to use it in a fight or quarrel. (PC § 626.10, 417, 3024f.)

Fighting

Illegal to hurt someone else by "force and violence," throwing chemicals, or by using a "deadly weapon" or any other tool or instrument. Reasonable force may be used if necessary in self-defense or in defense of others. (PC 240-245)

Liability up to $2,000 on parents of a minor whose wilful misconduct results in injury or death to another and additional $2,000 to cover medical, dental and hospital expenses. (CC § 1714.1)

Acts tending to injure, degrade or disgrace a student prohibited (Education Code 10852).

Battery--any wilful and unlawful use of force or violence upon the person of another prohibited (Penal Code § 242).

Assault--an attempt, coupled with present ability, to commit battery prohibited (Penal Code § 240).

Assault and battery are misdemeanors (aggravated forms may be felonies).

Disturbing the peace by fighting, challenging to fight, or otherwise engaging in tumultuous or offensive conduct is a misdemeanor (Penal Code § 415).

Stealing

Theft is a felony when the value taken exceeds $200 or, when the property is taken from the person of another (PC §487); otherwise it's a misdemeanor (PC §484).

Robbery--the theft of property from the vicinity of another's person by means of force or fear--a felony (PC § 3211).

Extortion--obtaining property from another by means of threats to injure any person, property or reputation, a felony (PC § 519).

Knowingly receiving Stolen Property is a felony. If amount of property is less than $200 may be a misdemeanor (PC § 496).

Miscellaneous "Youth Crimes"

The following acts often involve minors and are illegal:

Vandalism--deliberately injuring or destroying property of another (PC 594);

Joy riding--taking a car, bicycle, boat, or other vehicle without the owner's permission (PC 499b);

Lost property--keeping lost property without trying to find its owner, whenever such is possible (PC 485);

Setting fires--setting fire to a building or another person's personnel property (PC 447a, 449a);

Cruelty to animals--abandoning, being cruel to, or taking improper care of an animal (PC 597a, 597f);

Littering--throwing or putting anything on a roadway that might damage a car, person, or animal; throwing anything burning on a roadway; littering, destroying highway signs (PC 588a, 588b, 590; Vehicle Code 23111);

Sexual Relations--having sexual relations with a person under 18 even if the person has consented, or with a person over 18 if the person is forced (PC 261, 261.5);

Weapons--throwing things or shooting a weapon at buses, trucks, trains or cars (PC 218; VC 23110);

Slugs--using any kind of slug, false or imitation coin, in a vending machine, slot machine, or telephone; and making or selling slugs (PC 640a, 648a);

Contributing to Delinquency--persuading a minor to break the law.

Crimes Against School Personnel

Threatening a school officer or employee in an attempt to influence any act in the performance of his/her duty is a felony (PC § 71).

Upbraiding, insulting or abusing a teacher in the presence or hearing of a pupil or other school personnel on school premises by any person is a misdemeanor (Education Code §§ 13559, 135660).

Interfering with classes a misdemeanor (PC § 403). Only a person's actual conduct, rather than the content of his/her message may be regulated, In re Kay, 1 Cal. 3d 930. In instances where the appropriate standard of conduct lies in doubt, a warning and a request that the violator curtail his/her conduct must precede any official action.

Persons over 16 and not a pupil prohibited from coming on school grounds and causing disruption, etc. (Education Code Section 13558.5).

(Statute not meant to lessen right of parent to go to school to discuss educational problems.)

Crimes Against School Property

Malicious injury or destruction of real or personal property of another, a misdemeanor (PC § 594).

Parents liability for wilful destruction of property by their children (includes damage, destruction or failure to return school property). (Education Code Section 10606) No limit on the amount of liability.

Presence of Undesirable Persons

Loitering about any school or public place at or near which children attend or normally congregate prohibited (PC § 653g). Must be apparent from all facts and circumstances that person lingering is doing so for the purpose of commiting a crime when an opportunity presents itself (People v. Frazier, 11 Cal. App. 2d 174).

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PRIVACY AND DISCLOSURE OF PUPIL RECORDS

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PRIVACY AND DISCLOSURES OF STUDENT RECORDS

The lawmakers of California have set down laws pertaining to student records (Education Code Sections 49060-49078, these laws are basically designed to protect and ensure the privacy of the individual student and to ensure compliance with the requirements of the Federal Family Educational Rights and Privacy Act of 1974 (Title 20, USC, Section 1681(g)).

Essentially the laws make available to parents confidential school information of their children relating to level of achievement, scores on standardized intelligence tests, aptitude and psychological tests, health data, family background information, teacher accounts or ratings and observations, and verified reports of serious or recurrent behavior problems. Also, parents are afforded an opportunity for a hearing to challenge the content of any of these school records. Finally, the act prohibits the school from releasing the records of students without parents' written consent.

More specifically, the major provisions of the Privacy & Disclosure laws require the following:

Annual Notifications

One basic component of the laws concerning student records is that requiring notification of the parent or guardian of his or her right to access to his or her child's records. Notification procedures are particularly elaborate in their compliance with state and federal laws. The notification statement must include:

- A statement of the right of natural parents, adoptive parents or legal guardians, and students (age 16 or older or who have completed the tenth grade) to review all personally identifiable information maintained by the district, their right to receive a copy of any or all records at a reasonable cost, and the right of parents with custody or of students age 18 or older to request the removal or correction of inaccurate, misleading or inappropriate information, including the right to a hearing.

- Specification of the availability (location) of information (policies) pertaining to:

  a) The types of pupil records and the types of information they contain;

b) Position of the official responsible for the maintenance of each type of record, the persons who have access, and the purposes for which they have access;

c) District policies for reviewing and expunging records;

d) Access rights of parents;

e) Procedures for challenging the content of records;

f) The cost of copies;

g) Other rights and requirements.

- A statement to the effect that parents or students over age 18 may file complaints with the Secretary of Health, Education and Welfare if they believe the district is not in compliance with federal requirements.

- Specification of information which is categorized as directory information, recipients, and a statement specifying the period of time within which the parent or student age 18 or older may direct the district to not release directory information.

Notification must be given upon the date of the pupil's initial enrollment and annually thereafter at the beginning of the first semester or quarter of the regular school term. It should be in the home language of the pupil and shall be in a form that reasonably notifies the parent or guardian of the above or the availability of the above specific information (Education Code Section 49063).

Access To Records

State and federal laws permit access to records according to the following listings. Those granted access are prohibited from releasing information to another person or agency without written permission from the parent or legal guardian. (If the pupil is age 18 or older the right of consent belongs to the pupil.) A log of persons or organizations requesting or receiving information from the record and the reason therefore must be maintained. Legitimate requests by school district personnel do not need to be recorded, nor do requests from parents or students nor those disclosures authorized in writing by a parent or eligible student.

Mandatory Access

The following persons or agencies shall have access to pupil records:

a) Natural parents, adoptive parents or legal guardian of pupil younger than age 18 (within 5 days of request)

b) School officials and employees for legitimate educational purposes

c) School Attendance and Review Board members

*d) Other public schools (California) where pupil has enrolled or intends to enroll

e) Federal, state, and county officials for program audit or compliance

f) Agencies specified by law (child abuse, attacks)

g) Natural parent or adoptive parent of dependent pupil age 18 or older (within 5 days of request)

h) Pupil age 16 or completed tenth grade

*i) Those so authorized in compliance with court order

*j) Private schools or out-of-state schools of anticipated or new enrollment

Permitted Access

The following persons or agencies may have access:

a) Appropriate persons in an emergency

b) Agencies or organizations in connection with students applying for financial aid

c) Accrediting association

d) Organization conducting studies on behalf of the district

*e) Private schools or out-of-state schools (to mandatory interim and permitted pupil records)

f) Those persons or agencies so authorized by parent or guardian with custody (or pupil if age 18 or older)

*Parent/eligible student notification required.

Pupil Record Categories

Under current law pupil records are divided into three categories--those which must be kept in perpetuity by a district, those which must be kept for a reasonable period before destruction and those which are kept only so long as they are considered useful.

Mandatory Permanent Pupil Records is the first category. The minimum information in this group is:

a) Legal name of pupil*

b) Date of birth

c) Method of verification of birth date

d) Sex of pupil

e) Place of birth

f) Name and address of parent of minor pupil

1) Pupil's address, if different
2) Annual verification of addresses

g) Entering and leaving date of each school year

h) Subjects taken

i) Grades and credits toward graduation

j) Immunizations or exemptions

k) Date of high school graduation or equivalent

A board may stipulate additional information to be a permanent pupil record. This information will be maintained in perpetuity for every pupil ever enrolled in the district. This record, or a copy, must be forwarded for transfer students to, or from, any public or private school in California.

*Records should be kept in the student's legal name but the school is not prohibited from using another name if requested by the parent with custody. Legal name changes should be recorded only when an affidavit or other legal proof is provided.

Mandatory Interim Pupil Records is the second category. It includes:

a) Access log

b) Health records

c) Special education programs

   1) Tests
   2) Forms
   3) Case studies
   4) Authorizations and actions

d) Language training records

e) Progress reports

f) Directory information prohibitions

g) Rejoinders to records

h) Other parental authorizations or prohibitions

i) Standardized tests less than three years old

Such records shall be maintained only so long as they are necessary for compliance with laws and regulations.

Mandatory interim pupil records must be forwarded to California public schools and may be forwarded to other schools when the pupil transfers.

Permitted Pupil Records, category 3, are those additional records maintained for appropriate educational purposes. They may include:

a) Objective staff ratings

b) Standardized tests more than three years old

c) Routine disciplinary data

d) Verified reports of relevant behaviorial patterns

e) Disciplinary notices

f) Attendance records not otherwise required

Such records shall be destroyed when their usefulness ceases or six months after a student withdraws or graduates. Such records may be forwarded to any school.

Correction or Removal Of Information

Following an inspection and review of a pupil's records, the parent may challenge the content of the pupil's record. (This right to challenge becomes the sole right of the pupil when the pupil becomes 18 or attends a post-secondary institution.)

The parent may file a written request with the superintendent of the district to remove any information recorded in the written records concerning the child which is alleged to be: 1) inaccurate, 2) an unsubstantiated personal conclusion or inference, 3) a conclusion or inference outside of the observer's area of competence, or 4) not based on the personal observation of a named person with the time and place of the observation noted. Note: Federal legislation also includes "misleading" and "a violation of the privacy rights of parents or students."

The superintendent shall then sustain or deny the allegations. If the allegations are sustained, the superintendent shall order the removal and destruction of the information. If the superintendent denies the allegations, the parent may appeal the decision to the governing board. The governing

board shall determine whether or not to sustain or deny the allegations. If the governing board sustains the allegations, it shall order the superintendent to immediately remove and destroy the information from the written records of the pupil.

If the final decision of the governing board is unfavorable to the parent, or if the parent accepts an unfavorable decision by the district superintendent, the parent shall have the right to submit a written statement of objections to the information. This statement shall become a part of the pupil's school record until such time as the information objected to is removed.

Both the superintendent and the governing board have the option of appointing a hearing panel in accordance with Education Code Sections 49070-71 to assist in the decision-making. The decision as to whether a hearing panel is to be used is solely the discretion of the superintendent or the board and not of the challenging party.

Generally speaking, to the degree a statement describes a student's behavior instead of evaluating it, the statement can withstand challenges. In addition, record comments should be restricted to areas of training.

The Privacy & Disclosure laws then provide parents and students a method to assure that only proper information is contained in the records kept by the school, and that this information is made available only to authorized individuals, and only with proper consent having been obtained.

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SPECIAL PROGRAMS

SPECIAL PROGRAMS

Public schools conduct several types of programs designed to provide educational services to students with exceptional or special needs.

Special Education

Special education programs are designed to meet the needs of physically, mentally, and educationally handicapped students. These programs provide for special classes and services for the deaf, blind, orthopedically handicapped, mentally retarded, severely mentally retarded, and other students with education handicaps.

In 1972, the California Master Plan for Special Education was created (Education Code Section 56300 - 56367). In general, master plan districts or counties must seek out and identify every child eligible for special education services, must design an individual learning plan for each child, and must provide educational services that meet the needs of the child at no expense to the parent or guardian. Parents and guardians must consent to evaluation of their child for special education services and to placement of their child in a special education program, and they may participate in the planning of the child's special education program.

Federal legislation (Public Law 94 - 142) requires states, as a condition of receiving federal funds for special education, to provide educational services similar to those provided for in a state master plan for special education.

Compensatory Education

Currently, three basic programs for educationally disadvantaged students are maintained in California public schools: ESEA, Title I, programs; educationally disadvantaged youth programs; and bilingual education programs.

- ESEA Title I Programs

The majority of California schools provide compensatory education programs under provisions of Title I of the Elementary and Secondary Education Act (ESEA) of 1965 (Title 20; USC, Section 24(a). ESEA, Title I programs offer educational services beyond regular services to children from low-income families. Each district with an ESEA, Title I, program and each school participating in the program must have an advisory committee, the membership of which must be comprised of more than a simple majority of parents of program participants.

The State Board of Education has established a grievance procedure for the processing of complaints of alleged violations of ESEA, Title I, regulations; other pertinent federal regulations; and state regulations (Section 3948 of the California Administrative Code, Title 5, Education).

- Educationally Disadvantaged Youth Programs

Educationally disadvantaged youth (EDY) programs (Education Code sections 54000-54007) are state-funded programs similar to those conducted under ESEA, Title I. Programs are funded under provisions of SB 90 of 1972, Educationally Disadvantaged Youth Act.

A principal requirement for applicants for EDY funds is the development of a school-site plan in which applicants describe the specific services that will be provided to meet the individual needs of eligible students (section 3900-3947 of the California Administrative Code, Title 5, Education).

- Bilingual Education

Pursuant to provisions of the Bilingual-Bicultural Education Act of 1976 (Education Code sections 52160-52179), school districts must, as a minimum, establish individual learning plans for meeting the needs of limited and non-English-speaking students or 15 or more limited-English-speaking students with the same primary language in the same grade level must offer a full bilingual instruction program of a bilingual-bicultural education program (Education Code Section 52165). The requirement that the school offer a full bilingual program or full bilingual-bicultural education program is dependent upon the school's receiving funds for such programs or receiving a specified amount of other state and federal monies that are wholly or partially intended for use in meeting the needs of limited or non-English-speaking students. The requirement for individual learning plans for limited and non-English-speaking students is not dependent upon receipt by the school district

of state education funds. Individual learning programs are designed to be consistent with the ruling of the United States Supreme Court in the case of Lau v. Nichols (414 U.S. 563 [1974]). In the opinion of the Court, failure to provide instruction in a language that students can understand is discrimination on the basis of national origin.

Indian Education

Currently, two basic statutes govern programs for Indian Students in California public schools: Indian Self-determination and Educational Assistance Act, and the Indian Education Act, Title IV.

Indian Education and Self Determination Act, (Public Law 93-638, 88 Stat. 2203).

On January 4, 1975, the President signed the Indian Self-Determination and Education Assistance Act, the stated purpose of which is:

> "To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes..."

Basically, the law authorizes and directs the Secretaries of the Interior and Health, Education and Welfare to contract with Indian tribes or tribal organizations for the operation of programs and services provided by the B.I.A. and the I.H.S. under guidelines and criteria established by the law and amends the Johnson-O'Malley (JO'M) Act with respect to providing more Indian control of contracts for assistance to public schools enrolling Indian students.

The Indian Education Assistance part of the Act, among other things, amends the JO'M Act to prohibit the Secretary of the Interior from entering into any contract for the education of Indians;

"unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which... contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives."

The Act further amends JO'M by requiring that, in school districts wherein the local school board is composed of less than a majority of Indians, the parents of the Indian children enrolled in schools affected by a JO'M contract shall elect a local committee of Indian parents. Such committees shall fully participate in the development of programs to be conducted under JO'M contracts, and shall have the authority to approve or disapprove contract programs. Moreover, the Secretary may revoke any contract if a local committee is not permitted to participate.

To ensure that Indian education funds are used to provide special and additional services to Indian students, the Act requires that, before the Secretary may make a grant, the Secretary must be satisfied that the quality and standard of education for Indian students enrolled in the District are at least equal to that provided to all students from all other resources available to the local school district (including Title IV).

- Indian Education Act (P.L. 92-318, Title IV)

In recognition of the special educational needs of Indian students in the United States, Congress in P.L. 92-318, Title IV, part A of the Indian Education Act, declared it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out elementary and secondary school programs designed to meet the special educational needs of Indian children. To carry out the policy, it further authorized a program of making grants to local education agencies entitled to such, and set up a submittal and approval procedure.

Such grants may be used for:

(1) planning for and taking other steps leading to the development of programs specifically designed to meet the special educational needs of Indian children, including pilot projects designed to test the effectiveness of plans so developed; and

(2) the establishment, maintenance, and operation of programs... specially designed to meet the special educational needs of Indian children."

Grant applications must, among other things, be developed in open consultation with, among others, parents of Indian children.

Part B of Title IV authorizes a grant program for the improvement of educational opportunities for Indian children. Such grants may be made to state and local educational agencies and to Indian Tribes and other Indian community organizations.

The grants may be used for the following:

(a) planning, pilot and demonstration projects;

(b) programs to stimulate provisions of educational services not available to Indian children in sufficient quantity or quality;

(c) development and establishment of exemplary education program;

(d) establishment and operation of preservice and inservice training program for persons serving Indian children as educational personnel preference for training of Indians authorized;

(e) to encourage dissemination of information and material relating to and the evaluation of the effectiveness of, educational programs which may offer educational opportunities to Indian children.

For purposes of a and b above, a grant cannot be approved unless there has been adequate participation by the parents of the children to be served and tribal communities in the planning and development of the project, and there will be adequate participation in the operation and evaluation of the project.

Priority may be given to applications from Indian educational agencies, organizations and institutions.

Part C of Title IV authorizes a similar grant program for special programs relating to adult education for Indians.

Title IV then goes on to, among other things, to create an office of Indian Education and a National Advisory Council of Indian Education. It also provides for grants for the purpose of preparing persons to serve as teachers in schools serving Indian Reservations (Indian preference authorized).

Finally, a significant provision of the Indian Education Act is the definition of "Indian" to include "any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or group of Indians terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member."

The definition is broader than that found in most legislation affecting Indians. Thus allowing better educational opportunities for more Indian children.

Rights of Gay Students

During their school years, young people begin to develop and explore, among other things, their sexuality. In many cases schools play a vital role in this process by providing the social settings in which students interact.

As the importance of schools in this context becomes increasingly clear, a growing movement is emerging which is asserting the rights of gay students in schools. Although there is still a substantial amount of resistance, school sponsored gay clubs and social activities are slowly emerging in locations throughout the country. In some cases pressure is being applied to assure adequate and non-judgmental coverage of gay lifestyles in sex education or family life programs.

This appears to be an area to watch for hard fought changes in the law.

For more informantion the following may be contacted:

Sexual Minority Youth Service Coalition
P.O. Box 11518, San Francisco, CA. 94101

Parents of Gays (Chapters in 26 U.S. cities)
A list of chapters can be obtained by writing
Box 24528, Los Angeles, CA. 90024